
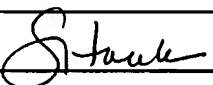


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	Filing Date	08/19/2003
	First Named Inventor	Robert A. Dunstan
	Art Unit	2113
	Examiner Name	Bonzo, Bryce P.
	Attorney Docket Number	110349-133958
Total Number of Pages in This Submission		9

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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

110349-133958

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on November 21, 2006Signature Typed or printed name Sally Houk

Application Number

10/644,432

Filed

08/19/2003

First Named Inventor

Robert A. Dunstan

Art Unit

2113

Examiner

Bonzo, Bryce P.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 35432

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_



Signature

Al AuYeung

Typed or printed name

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Telephone number

11/21/2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Application for:

Robert A. Dunstan

Application No.: 10/644,433

Filed: 08/19/2003

For: OPERATIONAL STATE  
PRESERVATION IN THE  
ABSENCE OF AC POWER



Examiner: Bonzo, Bryce P.

Art Group: 2113

Confirmation No.: 6990

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**PRE-APPEAL BRIEF REVIEW REQUEST**

In the Office Action mailed August 22, 2006 ("Final Office Action"), claims of the above-captioned application were rejected. Applicants hereby appeal this decision of the Examiner to the Board of Patent Appeals and Interferences according to 35 U.S.C. §134 and submit a Notice of Appeal in compliance with 37 C.F.R. §41.31 contemporaneously with the present request. Prior to the filing of the Appeal Brief, Applicants respectfully request review the legal and factual basis of the rejections in the above-captioned application in light of the remarks to follow.

**Remarks/Arguments**

**I. Status of Claims**

In the subject action, claims 1, 4, 6-10, 14, 16-23, 28-29 and 32-35 were rejected under 35 U.S.C § 102(e) as being anticipated by Westerinen et al. (US Patent No. 2004/0088589). Claims 2, 3, 11-13, 15, 24-27, and 30-31 were rejected under 35 U.S.C § 103(a). Claim 5 was objected as being dependent upon rejected base claim, but would be allowable if rewritten in independent form.

In response, Applicant has rewritten Claim 5 in independent form placing it in conditions of allowance; claims 1-4 and 6-31 remain rejected as set forth above.

## **II. Claims rejected under 35 USC § 102(e)**

Regarding claim 1, in response to AC failure, Westerinen teaches of immediately switching to a hibernation (ACPI S4) state, employing a battery only long enough for the operating system to save the state data, prior to actual entry in the hibernation (ACPI S4) state. Once the state data is persistently stored, and battery power is shut off to enter the hibernation (ACPI S4) state (paragraph 0024).

By contrast, in response to AC failure, claim 1 requires supplying power from a backup power source, initiating a suspend process (referred to as the S3 state in the prior art ACPI context), and intervening into the suspend process to save the state data before completing the suspend process, and finally, placing the system in a suspended-to-memory state, sustained by the backup power.

Thus, the claimed invention differs from the prior art in term of the state the system is to transition into on absence of AC, a suspended-to-memory (S3) in the case of claim 1 and a hibernation state (S4) in the case of prior art. Further, the claimed invention differs in who and how the persistent state is saved, intervening by the BIOS during the suspend process in the case of claim 1 vs by the operating system in the case of prior art.

Hence, applicant submits that Westerinen has not disclosed at least these features of claim 1. For at least these reasons, claim 1 is patentable over Westerinen.

Claims 2-7 depend from and add features to claim 1. Hence, at least for the reasons discussed earlier, claims 2-7 are also patentable over Westerinen.

Regarding claim 8, in an AC failed condition, Westerinen speaks of a battery sustaining power merely long enough for the operating system to save the state data and to go to hibernation state (ACPI S4 state) in which the state data is persistently stored before the battery power is disconnected (paragraph 0024). In contrast, claim 8 requires the apparatus to maintain the system in a suspend to memory state (ACPI S3 state) using a backup battery.

Moreover, in paragraph 0034, Westerinen tells of a power management controller, in hibernation state (S4 on AC power), waiting for AC power to be steady. However, Westerinen does not contain any teaching on monitoring for AC re-application while the apparatus in the suspend to memory (S3) state maintained by the backup power. Therefore, for at least these reasons, claim 8 is patentable over Westerinen.

Claims 9 and 10 depend and add features to claim 8, for at least the same reasons discussed earlier, claims 9 and 10 are also patentable over Westerinen.

In regards to claims 14, 21, 28, 32 and 34, each recites in substance the same "suspend to memory" and related recitations discussed earlier with respect to claim 1. Therefore, for at least the same reasons discussed earlier, claims 14, 21, 28, 32 and 34 are patentable over Westerinen.

Claims 15-20 depend and add features to claim 14; therefore, for at least the same reasons discussed earlier, claims 15-20 are also patentable over Westerinen.

Claims 22-23 depend and add features to claim 21. Thus, for at least the same reasons discussed earlier, claims 22-23 are also patentable over Westerinen.

Claim 29 depends and adds to claim 28 with its recitation; thus, for at least the same reasons discussed earlier, claim 29 is also patentable over Westerinen.

Claims 33 and 35 depend and add to claims 32 and 34, respectively. For at least the same reasons, claims 33 and 35 are also patentable over Westerinen.

### **III. Claims rejected under 35 USC § 103(a)**

Claim 2 was rejected under 35 USC § 103(a) as being unpatentable over Westerinen and in further view of Hsu (US Patent No. 6, 618,813). Claims 3 and 15 were rejected under 35 USC § 103(a) as being unpatentable over Westerinen and in further view of Cheok (US Patent No. 2004/0073818). Claims 11-13, 24-27, and 30-31 were rejected under 35 USC § 103(a) as being unpatentable over Westerinen and in further view of Mustafa. The applicant requests reconsiderations for at least the following reasons.

Claims 2-3 were rejected as being unpatentable over Westerinen as applied to claim 1, and in further view of Hsu et al. (US Patent No. 6,618,813) and Cheok et al. (US Patent No. 2004/0073818), respectively. Neither Hsu nor Cheok cure the previously discussed deficiencies of Westerinen, therefore claim 1 remains patentable over Westerinen, even when combined with either Hsu or Cheok. Claims 2 and 3 depend and add on claim 1, incorporating its recitation; thus, for at least the same reasons that claim 1 is patentable over Westerinen and Hsu or Cheok combined, claim 2-3 are also patentable over Westerinen in view of Hsu or Cheok combined.

Regarding claims 11, in response to AC power re-application, Westerinen talks of returning from the full "off" state to the hibernation (S4 on AC power state 106), where the system remains and awaits to be waken up by the power management controller or the user pressing the power button to resume to working system 90 [figure 4 and paragraph 0034]. Whereas claims 11 teaches of directly commencing a cold start reset process on AC re-application while the apparatus is in an un-powered state, without going through the hibernation state and wait for the power management controller or the user pressing the power button. The teachings of Mustafa does not alleviate the deficiencies of Westerinen as discussed above. Further, claim 11 requires determination and restoration of the saved state as part of the cold start process, and then switches to a resume process to complete the re-start up, a process that is not suggested by the teaching of Westerinen. Therefore, claim 11 is still patentable over Westerinen, even when combined with Mustafa. For at least these reasons, claim 11 is patentable over Westerinen, and in further view of Mustafa.

Claims 12-13 depend and add to claim 11; thus, for at least the same reasons claim 11 is patentable over Westerinen and in further view of Mustafa, claims 12-13 are also patentable over Westerinen and in further view of Mustafa.

In regards to claim 15, Cheok instruction does not cure the discussion above regarding the deficiencies of Westerinen as applied to claim 14, therefore claim 14 remains patentable over Westerinen, even when combined with Cheok. Claim 15 depends on independent claim 14, incorporating its recitation. Thus, for at least the

same reasons claim 14 is patentable over Westerinen and Cheok combined, claim 15 is also patentable over Westerinen in view of Cheok.

Claim 24 includes in substance the distinguishing recitations discussed above for claim 11. Thus, for at least the same reasons claim 11 is patentable over over Westerinen and in further view of Mustafa, claim 24 is also patentable over Westerinen and in further view of Mustafa.

Claims 25-27 depend on claim 24 with all its recitation. For at least the same reasons claim 24 is patentable over Westerinen, and in further view of Mustafa, claims 25-27 are also patentable over Westerinen, even combined with Mustafa,

Claim 30 includes in substance the distinguishing recitations discussed above for claim 11. Thus, for at least the same reasons claim 11 is patentable over over Westerinen and in further view of Mustafa, claim 30 is also patentable over Westerinen and in further view of Mustafa.

Claim 31 depends and adds to claim 30. Thus, for at least the same reasons, claim 31 is also patentable over Westerinen, even in further view of Mustafa.

### **Conclusions**

In view of the foregoing, the applicant respectfully submits that claims 1-35 are in condition for allowance. Early issuance of Notice of Allowance is respectfully requested. The Commissioner is hereby authorized to charge shortages or credit overpayments to Deposit Account No. 500393.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.



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Dated: 11/21/2006

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